

REMARKS

Claims 24-50, as amended, remain herein. Claims 24, 27, 34 and 46 have been amended. Support for the amendments may be found in original claims 24 and 46.

Applicants thank the Examiner for acknowledging that claims 27-33 and 37-50 would be allowable if rewritten to overcome the § 112 rejections and to include the limitations of their base claims. Claim 24 has been amended to include limitations of allowable claim 46. Allowable claim 27 has been amended to include the limitations of parent claim 24. As discussed below, claim 34 has been amended to overcome the § 112 rejection. Thus, all claims 24-50 are in condition for allowance.

1. Claims 34-36 were rejected under 35 U.S.C. § 112, second paragraph. Claim 34 has been amended, mooting the rejection. In particular, claim 34 has been amended to recite an operating part “moveable into the device body” and “an” electrical circuit.

2. Claims 24 and 34-36 were rejected under 35 U.S.C. § 102(b) over Markart U.S. Patent 6,151,110. Markart fails to disclose a biosensor ejecting means comprising a sliding member for pushing a rear end of a stacked biosensor, and a sensor sending out mechanism that includes a pushing member for pushing and sliding the sliding member, as recited in applicants’ claim 24. The device in Markart ejects a test card by sliding a first side (36) of the housing with respect to the second side (34). A “feed dog” (70) connects with holes in the test card and causes the test card to move relative to the second side (34) of the housing. Then, as the second side (34) is pulled back to its initial position, seals (80) claim the test card, causing it to remain motionless relative to the second side (34), which results in the test card being ejected from the housing.

No portion of the device in Markart pushes a rear end of a biosensor, as recited in applicants' claim 24. Nor can any structure in Markart push and slide a sliding member, as recited in applicants' claim 24 in reference to the ejecting means.

Since Markart fails to disclose every element of applicants' claim 24, Markart is an inadequate basis for rejecting claims 24 and 34-36 under 35 U.S.C. § 102(b). Reconsideration and withdrawal of the rejection are respectfully requested.

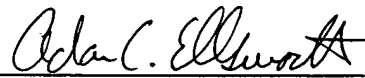
3. Claims 25 and 26 were rejected under 35 U.S.C. § 103(a) over Markart. For the reasons stated above, Markart fails to disclose every element of applicants' claim 24, from which claims 25 and 26 depend. Nor does Markart contain any disclosure that would have motivated one of ordinary skill to disclose every element of applicants' claims 24-26. For the foregoing reasons, Markart is an inadequate basis for rejecting claims 25 and 26 under 35 U.S.C. § 103(a). Reconsideration and withdrawal of the rejection are respectfully requested.

Accordingly, all claims 24-50 are now fully in condition for allowance and a notice to that effect is respectfully requested. The PTO is hereby authorized to charge/credit any fee deficiencies or overpayments to Deposit Account No. 19-4293. If further amendments would place this application in even better condition for issue, the Examiner is invited to call applicants' undersigned attorney at the number listed below.

Respectfully submitted,

STEPTOE & JOHNSON LLP

Date: February 10, 2009



Roger W. Parkhurst

Reg. No. 25,177

Adam C. Ellsworth

Reg. No. 55,152

STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Tel: 202-429-3000  
Fax: 202-429-3902

Attorney Docket No. 28951.5346